being bound absolutely, by the second rule above, to make payment to the legal representative, and one of the judges in the present case based his concurrence on this ground. *Mahan* v. *South Brooklyn Sav. Inst.*, 175 N. Y. 69; *Farmer* v. *Manhattan Sav. Inst.*, 60 Hun (N. Y.) 462; *Padmore* v. *South Brooklyn Sav. Inst.*, 48 N. Y. App. Div. 218. But these cases are to be distinguished from the principal case by the fact that in each of the former the bank had notice of the depositor's death. Where, on the other hand, there has been no actual notice of the death and no negligence on the part of the bank is shown, the bank has been held discharged by payment on a forged receipt to one presenting the pass-book. *Donlan* v. *Provident Inst. for Savings*, 127 Mass. 183; *Goldrick* v. *Bristol Co. Sav. Bank*, 123 Mass. 320.

SURETYSHIP—STATUTORY DISABILITY OF MARRIED WOMEN—MORTGAGE OF SEPARATE PROPERTY.—A. and wife gave mortgages on all their property to indemnify sureties on A.'s bond. Afterwards each separately borrowed money and gave a mortgage therefor on their respective properties, the money all being used to pay A.'s shortage and to have the mortgages to his bondsmen discharged. In an action on the wife's note and to foreclose the mortgage on her property, it was *Held*, that the plaintiff could not recover, defendant's contract being one of suretyship, and thus void under the code. *Field* v. *Campbell* (1904), — Ind. —, 72 N. E. Rep. 260.

The decision is clearly right, especially as the facts showed that the plaintiff, by his agent, had knowledge of the use to which the money borrowed was to be put. It had been held, in a similar case, that where the lender acted in good faith and had no knowledge or reason to suppose that the money loaned was not for the wife's benefit, she is estopped to deny liability. *Bouvey* v. *McNeal*, 126 Ind. 541; *Cummings* v. *Martin*, 128 Ind. 20; *Long* v. *Grosson*, 119 Ind. 3; *Chambers* v. *Bookman*, 32 S. C. 455. The question whether a married woman is a surety in an obligation is to be determined not from the form of the contract but from the inquiry as to whether she received in person or in benefit to her separate estate the consideration on which the contract depends. *Harbaugh* v. *Tanner*, — Ind. —, 71 N. E. Rep. 145; *Vogel* v. *Leichner*, 102 Ind. 55. It seems to be quite well settled that a wife who gives a note or a mortgage on her separate property to secure her husband's debt or to procure money for his use is a mere surety. See 8 L. R. A. 406, 795; *Bell* v. *Coe*, 77 Cal. 54; *Elston* v. *Comer*, 108 Ala. 76; *Veal* v. *Hart*, 63 Ga. 728. But in a few states it is held otherwise. *Jones* v. *Holt*, 64 N. H. 546; *Wells* v. *Foster*, 64 N. H. 585; *Iona Sav. Bank* v. *Boynton*, 69 N. H. 77; *Kuhn* v. *Ogilvie*, 17 Pa. Co. Ct.. 635. In the case last cited, it was held under a statute similar to that of Indiana that where a wife mortgaged her realty to procure money for her husband's use, the lender knowing the purpose, still her contract was not one of suretyship but was a valid disposition of realty. This seems to be based on the common law theory of a mortgage.

TORT—ACTION AGAINST MANUFACTURER BY ONE NOT A PURCHASER.—Plaintiff, a bartender, brings action against a bottler of champagne cider for damages for loss of an eye caused by the explosion of a bottle of defendant's

goods. *Held,* where no contract relations exist between the seller of an article of commerce, harmless in itself, and the one injured, there must be knowledge of the alleged defect on the part of the seller before he can be held liable. *O'Neill* v. *James* (1904), — Mich. —, 101 N. W. Rep. 828.

Under the general rule the manufacturer would not be liable, but the plaintiff contended that the case came within a recognized exception, relying on the very similar case of *Weizer* v. *Holzman,* 33 Wash. 87, 73 Pac. 797, and cases there cited, most of which, however, relate to articles intrinsically dangerous; and in *Skinn* v. *Reutter,* — Mich —, 97 N. W. 152, the seller of diseased hogs was held liable to a third person for damages arising from the infection of this person's hogs, as the original selling was an act dangerous in itself. But in the principal case, the court held that the exception to the general rule did not apply. These exceptions are well stated in *Huset* v. *Case Threshing Machine Co.,* 120 Fed. Rep. 865. See also *Heizer* v. *Kingsland & Douglass Mfg. Co.,* 110 Mo. 605, and *Glazer* v. *Seitz,* 71 N. Y. Supp. 942. As to the general subject see 2 MICH. LAW REV. 151, 235, 422.

WILLS—PROOF OF LOST WILL.—It was shown that decedent's will was seen in his possession by several persons on different occasions, even as late as the day preceding his death; that the decedent had expressed his satisfaction with the will to several witnesses; that its contents could be proved; but that it could not be found after its maker's death. *Held,* not sufficient to entitle the alleged will to probate. *In re Colbert's Estate* (1904), — Mont. —, 78 Pac. Rep. 971.

In the decision of cases involving attempts to secure the probate of lost wills, the law is well settled that where the will is shown to have been in testator's possession prior to his death, and that he was mentally competent, a presumption arises, upon the failure to find the will after his death, that he destroyed the same with intention of revoking it. This presumption, however, is only prima facie and may be rebutted by proper evidence. It may sometimes be overcome by all the circumstances of the case when no one circumstance is sufficient to produce that result. *Gardner* v. *Gardner,* 177 Pa. St. 218, 35 Atl. Rep. 558. Whether or not declarations of the testator, in respect to his satisfaction with the will, are proper to be received in evidence to rebut the presumption that he destroyed it is a question upon which there is a sharply defined conflict in the authorities. In England, and in probably a majority of the states in the Union, such declarations are held to be admissable. *Sugden* v. *Lord St. Leonards,* L. R. 1 P. D. 154; *Behrens* v. *Behrens,* 47 Ohio St. 323, 25 N. E. Rep. 209, 21 Am. St. Rep. 820; *Williams* v. *Miles* (Neb.), 94 N. W. Rep. 705; *In re Valentine's Will,* 93 Wis. 45, 67 N. W. Rep. 12. On the other hand, the United States Supreme Court and some of the most eminent state courts support the ruling of the principal case that such declarations are, in their nature, purely hearsay evidence, and that they can be brought under no recognized exception to the hearsay rule; hence, they are inadmissable unless they are a part of the res gestae, or are introduced to prove the mental condition of the testator. *Throckmorton* v. *Holt,* 180 U. S. 552, 21 Sup. Ct. Rep. 474; *Matter of Kennedy,* 167 N. Y. 163, 60 N. E. Rep. 442.